IN THE HIGH COURT OF JUDICATURE AT MADRAS

Date:- 18.01.2005

Coram

The Honourable Mr. Justice V. KANAGARAJ
and
The Honourable Mr. Justice S. SARDAR ZACKRIA HUSSAIN

W.A. Nos.1115 to 1117 of 1999

Sakunthala ... Appellant in W.A. No. 1115 of 1999

Aysha Ammal ... Appellant in W.A. No. 1116 of 1999

T. Murugesan ... Appellant in W.A. No. 1117 of 1999

..Vs..

1. Collector of Ramanathapuram
   at Ramanathapuram.

2. District Revenue Officer,
   Collector's Office,
   Ramanathapuram. ... Respondents in all appeals

Appeals under Clause 15 of the Letters Patent against the order dated 16.6.1999 made in W.P. Nos.57 to 59 of 1992.

For Appellants : Mr. M.V. Venkataseshan
For Respondents : Mr. M. Mahalingam,
Govt. Advocate

COMMON JUDGMENT

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The above writ appeals have been filed praying to set aside the order dated 16.6.1999 made in W.P. Nos.57 to 59 of 1992 by a learned Single Judge of this Court.

2. Tracing the history of the above writ appeals coming to be filed before this Court, what comes to be known is that an extent of 8100 sq.ft of land comprised in Town Survey No.19 Resurvey No.317/1A at Rajasuriamadai, which is a part of Ramanathapuram town originally belonged to one R.Chidambaranatha

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Durai; that his right over the said extent of land had been recognised by the Secretary of Ramanathapuram Samasthanam by proceedings dated 30.9.1951; that a piece of land, which is part of one acre of land, alloted to one R. Chidambaranath Durai, was sold to the appellant in W.A. No.1115 of 1999 by a registered sale deed 8.11.1984; that from the date of purchase, she has been in continuous possession and enjoyment of the same; that she has even plotted out the land and sold two portions and kept the remaining portion for herself; that in the year of 1985, the Ramanathapuram Municipality attempted to trespass into the said land, claiming that it was the Government poramboke land and the same was assigned to it by the revenue department; that the petitioner in W.P. No.57 of 1992 filed O.S. No.63 of 1985 on the file of the Sub Court, Ramnad for declaration and perpetual injunction and the said Court, granted decree as prayed for, by its judgment dated 28.11.1986; that as the said judgment and decree was not challenged, the same has become final and conclusive; that on 17.9.91, the second respondent issued a notice of enquiry alleging that Survey No.317/1A was Municipal Mangammal Chathram Poramboke and ground rent and patta had been wrongly given to the petitioner in W.P. No.57 of 1992 and so she should submit her explanation as to why the ground rent and patta should not be cancelled, for which the petitioner submitted a detailed explanation as to how the said notice was illegal and unsustinable; that by proceedings dated 03.12.91, the second respondent has passed an order, cancelling the patta stood in the name of the petitioner in W.P. No.57 of 1992 and hence the petitioner filed W.P. No.57 of 1992, seeking to issue a writ of certiorari, to call for the records in Na.Ka.B-5/72578/91 dated 3.12.91 on the file of the District Revenue Officer, Ramanathapuram and quash the same as illegal.

3. The further case of the appellant is that an extent of 8065 sq.ft of land comprised in Town Survey No.19 Resurvey No.317/1B at Rajasuriamadai, which is a part of Ramanathapuram town originally belonged to Raja of Ramnad; that the aforesaid extent of land, was sold by the wife of the said Raja Indira Devi to the appellant in W.A. No.1116 of 1999 by a registered sale deed dated 3.3.1984; that from the date of purchase, she has been in continuous possession and enjoyment of the same; that on 17.9.91, the second respondent issued a notice of enquiry alleging that Survey No.317/1A had been classified as Municipal Mangammal Chathram poramboke and ground rent and patta had been wrongly given to the petitioner in W.P. No.58 of 1992 and so she should submit her explanation as to why the ground rent and patta should not be cancelled, for which the petitioner submitted a detailed explanation as to how the said notice was illegal and unsustinable; that by proceedings dated 03.12.91, the second respondent has passed an order, cancelling the patta stood in the name of the petitioner in W.P. No.58 of 1992 with

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regard to 8 cents of land and hence the petitioner filed W.P. No.58 of 1992, seeking to issue a writ of certiorari, to call for the records in Na.Ka.B-5/72378/91 dated 3.12.91 on the file of the District Revenue Officer, Ramanathapuram and quash the same as illegal.

4. The further case of the appellant is that an extent of 437 sq.ft of land comprised in Town Survey No.19 G R S No.317/1A at Rajasuriamadai, which is a part of Ramanathapuram town originally belonged to Raja of Ramnad; that the aforesaid extent of land, was sold by the brother of the said Raja namely Chidambaranada Durai to the appellant in W.A. No.1117 of 1996 by a registered sale deed 17.8.1989; that from the date of purchase, he has been in continuous possession and enjoyment of the same; that on 17.9.91, the second respondent issued a notice of enquiry alleging that Survey No.317/1A had been classified Municipal Mangammal Chathram poramboke and ground rent and patta had been wrongly given to the petitioner in W.P. No.59 of 1992 and so he should submit his explanation as to why the ground rent and patta should not be cancelled, for which the petitioner submitted a detailed explanation as to how the said notice was illegal and unsustainable; that by proceedings dated 03.12.91, the second respondent has passed an order, cancelling the patta stood in the name of the petitioner in W.P. No.59 of 1992 with regard to 437 sq.ft. of land and hence the petitioner filed W.P. No.59 of 1992, seeking to issue a writ of certiorari, to call for the records in Na.Ka.B-5/72378/91 dated 3.12.91 on the file of the District Revenue Officer, Ramanathapuram and quash the same as illegal. Learned Single Judge, dismissed all the above three writ petitions. As against the same, the appellants have come forward to prefer the above writ appeals, on grounds as brought forth in the grounds of appeal.

5. Learned counsel for the appellant would submit that earlier, when the Municipality claimed title to the land in dispute and sought to usurp possession from the appellants, the appellants filed civil suits and got decree in their favour; that if originally the Government had title, the Municipality being the wing of the Government, might have produced all the relevant records and got the decree in its favour; that when the judgments and decisions of the civil Court are conclusive regarding title to the property, it is not open to the respondents to claim that the land in question was taken over under the Estate Abolition Act (Tamil Nadu Act 26/48); that the second respondent, while accepting the sale of 10 ½ cents of land in favour of the petitioner in W.P. No.58 of 1992, has not assigned any reason as to why the sale in respect of other extent of land cannot be sustained; that no document was filed either before the civil Court or before this Court to prove that town survey Nos.18 and 19 were declared as poramboke land as

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alleged in the impugned order; that the alleged Government records relating to survey No.317/1A were not even produced before this Court; that the observation of the learned Judge that since the respondents were not parties to the civil proceeding i.e. the judgment and decree of the civil Court is not binding on them is not at all sustainable in law; that the document relating to taking over was not at all produced either before the Civil Court or this Court and hence he would pray for the relief extracted supra.

6. In support of his submissions, learned counsel for the appellants would rely on the decisions reported in JOTHIMANI, W.T. Vs. MINOR KHODAY ETC. & ANOTHER (1999(2) L.W. 425) and in KUPPUSWAMY Vs. COMMISSIONER OF POLICE, GREATER CHENNAI (1998(I) C.T.C. 630).

7. In the first decision cited in (supra) 1999(2) Law weekly 425 it is held as follows:

> " As against the analytical and clinical precision with which the learned District Munsif had dealt with the matter, the impugned order of the Assistant Settlement Officer is cursory and superficial. In fact, the hallmark of a decision is such precision in dealing with the documents which is not always found in the orders of Revenue Authorities. What is more, the Settlement Officer has wholly relied upon the report of the Assistant Settlement Officer, Villupuram.

8. The second judgment cited by the counsel for the appellants reported in (Supra)(1998 I C.T.C. 630) is not relevant to the facts of the present case in hand, wherein The Honourable The Chief Justice of this Court has referred the contradictory decisions rendered by the Honourable single Judges of this court in respect of a similar matter to a larger Bench of this Court.

9. Learned Government Advocate appearing for the respondents would submit that the village Rajasooriamadai was taken over by the Government on 7.9.1949 under Zamin Abolition Act and hence the Ramanathapuram Zamin has no title over the land in dispute after 7.9.1949; that there is no proof to show that Chidambaranatha Durai obtained the land from his elder brother, who was the Rajah of Ramanathapuram long prior to the Estate Abolition Act came into force; that the contention of the petitioners that their right over the said extent of land has been recognised by the Secretary, Ramanathapuram Samasthanam in his proceedings dated 30.9.51 is not correct; that as the Zamin

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Abolition Act came into force on 7.9.49, the Secretary has no power to recognise the right over the land on 30.9.1951 and the recognition, if any, has become null and void; that in the suit in A.S. No.63 of 1985 on the file of the Sub Court, Ramnad filed by the petitioner in W.P. No.57 of 1992, the Government have not been impleaded as respondents and only the Ramanathapuram Municipality has been impleaded as respondent and hence the judgment and decree of the Sub Court is not binding on the Government and the order of the second respondent, cancelling the patta issued wrongly by the Special Tahsildar is correct and justifiable and hence would pray for dismissal of the writ appeals.

10. In consideration of the facts pleaded having regard to the materials placed on record and upon hearing the learned counsel for the appellants in all the above three writ appeals and the learned Government Advocate on the writ side, to put it in a nutshell, all the three writ appeals have arisen from out of the common order passed in W.P.Nos. 57 to 59 of 1992 by a learned single Judge of this Court on 16.6.1999. While the writ petitions have been filed by appellants herein respectively challenging the proceedings initiated by the respondents claiming the three properties respectively concerned with the above three appeals, the first appeal measuring 8100 sq. feet, the second writ appeal measuring to an extent of 8065 sq. feet and the third writ appeal measuring to an extent of 437 sq. feet which are alleged to have been sold either by erstwhile Ramanathapuram Samasthanam or by the purchasers from them or by the erstwhile Raja's near relatives and this being not accepted by the respondents who have come forward to put a strong case against the appellants stating that these properties are Government poromboke lands and appellants are not entitled to the same and since these properties have been assigned in favour of the Ramnad Municipality. The respondents would claim that they have got every right to either cancel the patta alleged to have been issued earlier as it is claimed on the part of the appellants or lay emphasis of their legal rights and therefore as rightly concluded by the learned single Judge neither the suit alleged to have been filed as against the Ramanathapuram Municipality so far as it is concerned with the properties covered under the writ proceedings i.e., the above suit filed by the first appellant in O.S.No.63 of 1985 on the file of Sub Court, Ramanathapuram nor the decree obtained therein as against Ramanathapuram Municipality would have any bearing on these respondents who were not parties to the suit proceedings and therefore the learned single Judge has rightly arrived at the valid conclusion to hold that the respondents are free to exercise of their rights in accordance with law as they have done in the past and the appellants cannot challenge the same by means of writ appeal, seeking this Court to exercise its

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inherent powers under Article 226 of the Constitution of India and the remedy lies for the appellants only to approach the civil court, if at all they have got any right to exercise regarding the subject matter and therefore this Court does not find any reasonable ground to cause its interference in to the considered and merited common order passed by the learned single Judge of this Court in W.P.Nos.57 to 59 of 1992 on 16.6.1999 and hence the following order.

In result,

(i) The above writ appeals do not merit acceptance and they become only liable to be dismissed and they are dismissed accordingly;

(ii) The common order passed by the learned single Judge of this Court in W.P.Nos.57 to 59 of 1992 dated 16.6.1999 are hereby confirmed;

(iii) However, there shall be no order as to costs.

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

Copy to:

1. Collector of Ramanathapuram
   at Ramanathapuram.

2. District Revenue Officer,
   Collector's Office,
   Ramanathapuram.

3 cc to Mr. M.V. Venkataseshan, Advocate, SR. 1837,1838,1839
1 cc to The govt. Pleader, High Court, Madras. SR. 1779

W.A. Nos.1115 to
1117/1999

KC (CO)
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